Machine learning and copyright infringement, or COPYRIGHT SHOULD NOT IMPEDE AI INNOVATION

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XIV CODAIP, 5-6th November 2020
Outline

1. Machine learning and copyright: how it works
2. Is feeding copyrighted content in ML modules legal?
3. Should it be legal?
4. If so, what exception is most suitable?
MACHINE LEARNING AND COPYRIGHT: HOW IT WORKS?
“AI Can Help Scientists Find a Covid-19 Vaccine:
Artificial intelligence has already played a vital role in the outbreak since day 1—a reminder for the first time in a while that it can be a tool for good.”

Source: www.wired.com
‘Google Is Feeding Romance Novels To Its Artificial Intelligence Engine To Make Its Products More Conversational’

Source: www.buzzfeednews.com
The Next Rembrandt:
BRINGING THE OLD MASTER BACK TO LIFE
‘Controversial face recognition company Clearview AI is developing surveillance cameras that use its enormous database of Facebook and Instagram photos to identify subjects’

Source: www.dailymail.co.uk
IS THIS LEGAL?
• US – fair use
  • Hathi Trust, Google Books cases

• EU – TDM exception
  • EU Copyright Digital Single Market Directive

• Australia, elsewhere - ??
• **Exclusive right of reproduction** – applies!
  - S 21 Copyright Act 1968
  - WCT, WPPT

• **Copyright exceptions** – do not apply?
  - Temporary reproduction exceptions
    - S43A and S43B Copyright Act 1968
    - Similar to transient copying exception in the EU Information Society Directive
  - Fair dealing exceptions
    - research and study
    - criticism and review
    - parody and satire
    - news reporting
    - judicial proceedings
The Washington Post’s robot reporter Heliograph has published 850 articles in the past year.

Source: www.forbes.com
Argument:
expressive v non-expressive use
In practice...

AI sector

Creative industries
Is licensing an option?

Individual licensing

Collective licensing
SHOULD MACHINE LEARNING BE LEGAL?
Solution?

- **Overall benefit as a criteria**
  - US Fair use and transformative uses
  - EU TDM exception – enable AI

- Creative industries – left behind?
  - Content as free fuel for AI

But:
- Opportunities for new experimental art projects
- Copyright safeguards in place
- No other viable alternative
IF EXCEPTION, WHICH ONE?
FAIR USE:
Flexible, adaptable+
Broad, uncertain scope-

TDM EXCEPTION:
Narrow, clear scope+
Inflexible, non-adaptable-

FAIR DEALING FOR TECHNICAL USE
More flexible and adaptable than TDM exception
Clearer scope than fair use
Conclusion

The Fourth Industrial Revolution

Source: horizontal.blog
Thank you

This presentation was based on my recent paper ‘Australian Copyright Law Impedes the development of AI: What are the options’ (under review) available on SSRN
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